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No. 07-1422

IN THE

Supreme Court of the United States

MICHAEL ANTHONY HURLEY
JO ANNA PICCIONE HURLEY
Petitioners

Versus

UNITED STATES BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT;
BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITIONER REPLY BRIEF

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QUESTION PRESENTED FOR REVIEW

1) Whether the court of appeals correctly determined that there was no federal court jurisdiction under 8 U.S.C. 1252, when section (f)(1) of 1252 abridges the immunities of citizens, such as Jo Anna Hurley, who are bound in contracts of marriage to immigrants, and sections (b)(1) and (d)(1) and other sections are adversarial to the rights of immigrants and their citizen spouses found in the 1st, 4th, 5th, and 14th amendments and the Obligation of Contracts clause.

2) Whether there is no firm evidence that Michael Hurley is in fact "convicted" for the purposes of removal because of the improperly obtained confession, the broad law under which he was convicted and because of his Italian pardon and expungement and its construction.

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STATEMENT

In section 2 of the Solicitor General's Statement, Respondents state as fact that "Michael Hurley is a native of India and a citizen of the United Kingdom", but to not confuse "native" with "indigenous", in fact, Michael Hurley is ¾ English/Scottish by blood and ¼ Celanese/Armenian and is a citizen of the United Kingdom.

Also, they neglected to inform that on July 24, 2003, when Michael Hurley filed an application to adjust status, he was given an A number by U.S.C.I.S., which is a legal visa, number A95 609 022. (Appendix H)

The "initial" stay of removal by ICE Field Director Robinson was not on June 22, 2004 as stated by Respondents, but was in fact granted within a few days after his May 2004 arrest by ICE officials in New Orleans, wherein he was handcuffed and told he was soon to be removed. Instead, FOD Robinson, allowed Hurley to return home and, a few days later, told both Michael and Jo Anna Hurley that Michael was being given one month to get a plane ticket for a voluntary departure. (App. E, F, G, & H); (Rec. Excpt 16)

ARGUMENT

8 U.S.C. 1252/JURISDICTION

This cannot be characterized as anything other than a stay granted by ICE. ICE knew where Michael was living and could have arrested him and removed him during that month, but they did not, because they had granted him a one-month stay prior to his voluntary departure date, later agreed upon as June 21, 2004. This "initial" stay is an administrative remedy, and would have precluded Michael Hurley from filing a petition for review within the 30-day requirement – 8 U.S.C. 1252(b)(1) – since all administrative remedies had NOT been exhausted as required by 8 U.S.C. 1252(d)(1).

Thus according to the facts of this case, 8 U.S.C. 1252 would have prevented Hurley from receiving due process even if he had attempted to file a petition within the 30-day window. **And, without due process Jo Anna Hurley's obligations of her contract of marriage with Michael could then have been unreasonably impaired by the federal government by law, which is expressly forbidden by the Obligations of Contracts clause of the Constitution of the United States.**

Even Respondents under Section 1.a. of their Argument agree that "petitioners never exhausted administrative remedies, in contravention of 8 U.S.C. 1252(d)." (Brief for Respondents, p.6) That is exactly our point: there was never any window of opportunity for due process for the Hurleys at all. Thus it would not have mattered whether they were aware of the 30-day time limit or not, and thus they did not *fail to comply*, nor do they need an excuse, but the Congress might need an excuse for why they are writing laws that are effectively denying due process to the immediate family relatives of American citizens and thus to the citizens themselves.

Beyond that, other circuit courts have decided in favor of immigrants who were misinformed or uninformed. (*Socop-Gonzales V. INS*, 272 F.3d 1176, 1193 (9th Cir.2000) & *Nagahi v. United States*, 219 F.3d 1166 (10th Cir.1986)

Did the Framers of our Constitution intend that such laws as 8 U.S.C. 1252(b)(1) would be written, so that protections of our freedom through our 5th and 14th amendment rights to due process could be so arbitrarily restricted so as to be almost non-existent? In essence, 1252 is saying: Yes, you have the right to due process and a redress of grievances, but you only have those rights for 30 days after your order of removal and only if the executive

branch did not apply an administrative remedy such as that stay of removal you received. With the stay granted and voluntary departure given that skinny little door which just barely cracked open to give you due process was permanently shut and you are forever barred from entering through it. And thus, freedom in America has become a thing of the past.

ARGUMENT – INA 237(a)(1)(B) and THE PARDON/EXPUNGEMENT

And, to illuminate the perspective of the unschooled immigrant more: How can Hurley be accused of staying longer than his Visa Waiver entry permitted by 4 years when he was given an A number and 4 stays by ICE – all administrative remedies? (Appendix G, INA 237(a)(1)(B). *The Hurleys believed Michael was in complete compliance with the law!* After all, both the Legislative Branch (the private bill) and the Executive Branch had created the situation that provided him with the stays he received. Why therefore does he have a 10-year bar of inadmissibility? Why not 3 years? Or one year?

The Hurleys' clearly made every effort to stay within the law. Even Hurley's denial of having a conviction was not a willful misrepresentation, but a sincere belief that

his pardon and expungement had wiped out that conviction for all purposes including immigration purposes. They continued to assert this in their Writ of Certiorari reminding the Court of the broad effects of a Presidential pardon and expungement. (K*ungys v. United States,* 485 U.S. 759, 780 (1988); (*Ex Parte Garland,* U.S. 333,381 (1866).

ARGUMENT – VISA WAIVER PROGRAM

In Section 1 of their Statement, Respondents state that:

> ....VWP is predicated on a type of *quid pro quo*: the Attorney General...agrees to waive an alien's inadmissibility *for lack of a visa* if, and only if, that alien agrees before he is admitted to waive the right to challenge any later finding of removability." (Italics mine) (Brief for Respondents, p.2).

The Court might wish to note that Hurley did not "lack a visa", but in *fact* had a B-1,B-2 Visa with an "indefinite" stamp on it, and so he did not according to these purposes even *need* a Visa Waiver. (Rec. Excpt, p.4)

In other words, by having a B-1,B-2 visa, this should give Hurley the right to due

process, because he did not require the waiver of a visa, since he had one! And, his attempt to use his B-1,B-2 Visa was foiled by the policing function of the preflight inspection station. (Rec. Excpt p. 5) The use of the Visa Waiver on that flight on April 26, 2003 was for him not a choice, but was a matter of U.S. policy. (8 U.S.C. 1187). The Constitutional right to due process cannot be barred when it is not given up voluntarily, but it is forced upon an alien by the very government that would later deny him his due process rights under the Constitution.

Respondents cite *Handa v. Clark*, 401 F.3d 1129 (9th Cir.2005), but Handa did not attempt to use any other visa than a Visa Waivor upon entering the United States as Hurley did.

ARGUMENT – ADJUSTMENT OF STATUS

They cite *Scheerer v U.S. Attorney Gen,,* 513 F.3d, 1244, 1253 (11th Cir.2008) and 8 C.F.R. 245.2(a)(5)(ii) "No appeal lies from an application [for adjustment of status] by the director." But, in *Dillingham v. INS*, though the BIA denied to adjust his status based on a conviction of simple possession of marijuana and cocaine, this decision was reversed and

remanded for adjustment of status by the 9th Circuit (*Id,* 267 F.3d 996 (9th Cir.2001)

Many requesting adjustment of status to resident do so, because they have a U.S. citizen spouse, child or parent. Denying them impartial due process wherein the immigrant may present evidence in his/her behalf, also denies due process to his/her U.S. citizen immediate family members, and is arbitrary, totalitarian, cruel, and adversarial to the Constitutional rights of their American relatives.

ARGUMENT – OBLIGATION OF CONTRACTS CLAUSE

This Petition for Writ of Certiorari is not made solely by Michäel Hurley, but by both Michael and Jo Anna Piccione Hurley, a citizen of the United States. Jo Anna's Constitutional right to due process before loosing her liberty to live in her own native land, which is a right given to her by the 5th and 14th amendments, will be denied her, if her husband (to whom she is obligated by contract of marriage, and who has been removed, without any opportunity to present his case before an impartial judge), never receives any form of unbiased due process in a court of law. She will effectively be removed with him because she will finally have to leave

America to fulfill the obligations of her contract of marriage. If she stays in America in order to keep her liberty, the obligations of her contract of marriage will be impaired, which is against the Obligations of Contracts clause of the Constitution of the United States.

ARGUMENT SUMMARY

Therefore, any bar to due process in the immigration case of Michael Hurley, such as the Visa Waiver bar, (8 U.S.C. 1187(b)(1&2) or the 30-day timeliness rule bar, (8 U.S.C. 1252(b)(1) or the implied bar to appeals of denials to adjust status (contrarily see *Dillingham v. INS,* supra) *or any other bar, cannot have precedence over the Constitutional right Jo Anna Hurley has to due process to protect her Liberty and the Constitutional right Jo Anna has to the protection which the Obligation of Contracts clause provides for her Contract of Marriage. The Constitution is the Supreme law of the land and immigration law cannot override it. The rights of a citizen of the United States in a marriage with an immigrant, must by Constitutional law, have greater weight than the lack of rights provided by law to the immigrant.*

The sacred nature of marriage and family is protected by the Constitution through the Obligations of Contracts clause, which provides that no law that impairs those obligations unreasonably may be written, and certainly only due process can allow for such a law to separate a sacred marriage and family through deportation/removal. Otherwise, the Constitution is made void rather than the unconstitutional immigration law being made void. The latter is what needs to happen here, no matter how "novel" that may sound to the ears of those who have forgotten what the words of the Constitution of the United States sound like, including the Congress which seems to have the shortest memories of all.

ARGUMENT – CONSTITUTIONALITY OF 8 U.S.C. 1252 IS IN QUESTION

Respondents argue that "Petitioners do not appear to dispute that the lower courts lacked jurisdiction under 8 U.S.C. 1252...", but our arguments in answer to Questions 2 and 3 of our Writ do, in fact, dispute that. Almost the whole of our argument in Question 2 disputes that the courts lacked jurisdiction under 1252, but especially pages 36 to 51, wherein we continually question the Constitutionality of those parts of 8 U.S.C. 1252 that so arbitrarily deny due process

through grossly restricting jurisdiction, creating tiny windows of time in which to file, and countless restrictions concerning when, by whom, how, and in which courts filing a petition for review can occur. (Pet.Writ Cert.)

On pages 43-44 of our Writ of Certiorari, Petitioners point out the most disturbing question of constitutionality found in 8 U.S.C. 1252(f)(1) in which we assert that this law is in contravention to the 14th amendment, which provides that *no law shall be made or enforced that "shall abridge the privileges or immunities of the citizens of the United States."* But, 1252(f)(1) states:

> Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme court) shall have jurisdiction...to enjoin or restrain the operation of the provisions of part IV of this subchapter.....other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

In other words, 1252(f)(1) means that no matter that one of the parties is an American citizen and wife of an immigrant, like Jo Anna Hurley is, and no matter what action that

American wishes to take, such as her Injunction to stop her husband's removal; no American, including Jo Anna, can find due process and jurisdiction in any court except the Supreme Court of the United States, in which they have about a 1 in 100 chance of having their case taken up for review by the court!

How anyone can read the 14th Amendment and 1252(f)(1) back to back and not realize that the latter violates the 14th Amendment, seems impossible to Petitioners. How anyone cannot see that 1252(f)(1) abridges the "privileges" and "immunities", especially due process, of the citizens of the United States, seems ludicrous to Petitioners.

Therefore, for all of the above reasons, and more to come, Petitioners do indeed dispute that the District court and court of Appeals lacked jurisdiction under 1252.

ARGUMENT - JURISDICTION

Further, our argument in Question 3 points out that *Lujan-Armendariz v. INS*, 222 F.3d 728, 732 (9th Cir 2000), supports jurisdiction by the lower courts because it states, "We do retain jurisdiction...to determine whether or not petitions challenging deportation orders are subject to the jurisdictional bar", or

jurisdiction can be found to review cases in order to determine if immigrants are truly " 'convicted' for the purposes of the immigration laws."

ARGUMENT - MERITS

This in part refers to the merits of the cases, such as in the Hurley's case, determining whether M. Hurley's confession was obtained properly by the Embassy in Munich, (Matter of K, 9 I&N 715 (BIA-1962); (Matter of G.M. 7 I&N Dec.40 (A.G.1956), or whether his Presidential pardon expunging Hurley's conviction and pardoning the man, himself, thus demands Equal Protection, so that if Hurley's confession can be the cause of his removal, then the Italian pardon can equally bar his removal. (See *Dillingham v. INS*, 267 F3d. 996 (9th Cir.2001); Maisenberg v. U.S., 356 U.S. 670 (1958).

Finally, in Section 2 of their Argument, Respondents argue that the merits of the case against removability are lacking, but fail to provide any support for this, such as:
1) making an effort to support the viability of the improperly obtained confession (which was used for Hurley's removal), and was based on a broad statute (*Matter of B.M.*, 6 I&N 806 (BIA-1955) (*Matter of J*, 2 I&N 285, 287 (BIA-1957) (Rec. Excpt 6), or...

2) by providing any reasons why his pardon does not remove any chance that his confession can be used to remove him, (*Dillingham v. INS,* supra) (Note that in *Dillingham* the term "expungement" refers to a "rehabilitative" statute)(Brief of Appellants, p. 54) and if not that, then...
3) why his pardon, which does not identify the drug involved in his conviction, "cannot support an order of deportability" (*Matter of Paulus*, 11 I & N Dec.274 (BIA-1965); (Appendix I); (8 U.S.C. 1252(f)(2)

ARGUMENT – IRREPARABLE HARM

But, Jo Anna has shown:
1) how Michael's removal has caused her irreparable harm both financially and physically due to the very painful worsening of her health as she took over the full responsibility of their auto business and her husband's immigration case, and...
2) the great harm caused by the robbing and vandalism of her business assets by the very people working for her, who were doing part of the jobs Michael did before his removal. She has not filed a full police report of this because of her fears of retribution, although she has filed a full insurance report. (See our Petition for 60 Days Extension of Time to Submit the Writ...)

ARGUMENT - SUBSTANTIVENESS

The Government's arguments do not reach a substantive level of persuasion, because they cannot show any reason why Michael Hurley, who is a security guard at England's Heathrow Airport, having been given the highest security clearance in the United Kingdom by Scotland Yard, is a threat to our national security. Nor, can they show reason why a man with a 40-year-old drug conviction who, after being baptized into the Church of Jesus Christ of Latter-Day Saints and has not touched even alcohol or cigarettes in the past 35 years, is going to be likely to disobey our drug laws. (*Bridges v. Wixon*, 326 U.S., 135 (1945)

Nor do the Government's arguments (or actions in granting voluntary departure) question Hurley's good moral character. (*Matter of Carbajal*, I&N 272 (BIA-1978)

ARGUMENT – THE CONSTITUTION

In *The Immigration Reform Law of 1986* by N. Montwieler, the section on the INS and Drug Control [S16908], in the discussion of the Senate in passing this law, Senator Dole's words were:

> Both bills also provide authority for expeditious deportation of convicted felons. This is a particular concern of mine.... Will these provisions give the INS and the [BIA] sufficient authority to remove these felons from our criminal justice system without years of delays and appeals?

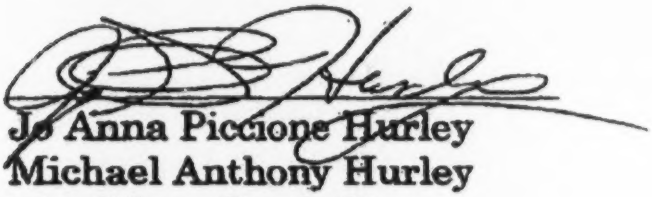
With this goal in mind, the Senate voted for immigration laws time and again that have stripped away the Constitutional rights of the US citizen family members of immigrants with old/minor convictions that do not reflect the immigrant's character at the time of his/her removal.

Since the 1996 Immigration Act, IIRIRA and 8 U.S.C. 1252, the Congress has been responsible for the de facto removal of countless numbers of our own faithful and patriotic citizens. Jo Anna is a native-dyed-in-the-wool-Mark Twain-loving/Thomas Jefferson/George Washington/Constitution-LOVING extremely patriotic American, who cannot begin to understand how she has lost her Constitutional rights to due process for herself and her family and her liberty too. Michael is a God-fearing/music-loving/British patriot who loves America, adores his wife, Jo Anna, and only wants her happiness, which he knows is best found in Louisiana.

CONCLUSION AND SUMMARY

No bar to jurisdiction in the immigration case of Michael Hurley has greater weight than the Constitutional right Jo Anna has to due process before her Contract of marriage and her liberty are impaired through his removal. There is no firm evidence that can clearly "convict" Michael of something that would bar his immigration to the United States. Michael is a man of good moral character and should be allowed to adjust status to permanent resident of the United States as soon as possible and live with his wife, Jo Anna, in beautiful Louisiana – their home.

Respectfully Submitted:



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